

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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NATHALY CORTEZ, individually and  
on behalf of other similarly  
situated individuals,  
Plaintiff,

v. Civil Action No.  
CASA DO BRASIL, LLC, 4:21-CV-03991  
Defendant.

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VIDEOTAPED DEPOSITION OF  
NATHALY CORTEZ

DATE: Friday, September 16, 2022  
TIME: 9:09 a.m.  
LOCATION: Best Western Premier Bryan College  
Station  
1920 Austin's Colony Parkway  
Bryan, TX 77802  
REPORTED BY: John Shavers, Notary Public  
JOB NO.: 5462014

1 going to be paid as a server?

2 A He said that when I was done training then I  
3 would be part of the tip pooling.

4 Q And did you ask Mr. Rogenby what tip pooling  
5 was?

6 A No.

7 Q Did anybody at that point explain to you  
8 that you were going to be paid 2.13 an hour, and then  
9 you'd be able to receive the tips that were paid by  
10 customers?

11 A No.

12 MR. TRAN: Objection. Compound  
13 question.

14 BY MR. BISSMEYER:

15 Q Did you ever ask anybody what tip pooling  
16 was?

17 A I'm not sure.

18 Q So do you recall ever having a discussion  
19 with Mr. Rogenby -- sorry -- a discussion with Mr.  
20 Gottardo where he told you, "Now that you are a  
21 server, you will be paid 2.13 per hour plus the tips"?

22 A No. I had that discussion with Cameron.

23 Q Okay. And you don't recall a discussion  
24 like that with Mr. Gottardo; is that right?

25 A Right.

1 Q When you started working as a server, were  
2 you ever told by anybody that you needed to record  
3 your tips?

4 MR. TRAN: Objection. Vague.

5 A No.

6 Q Did anyone ever ask you -- scratch that.  
7 Let's talk about cash tips. During the period of time  
8 that you were a server, were you told that all of the  
9 cash tips received from the tables you were serving  
10 were to be placed in the cash box?

11 A Yes.

12 Q And do you know whether a similar  
13 conversation was had with the other servers?

14 A I'm not sure.

15 Q And what would happen with the cash box at  
16 the end of the night such that the tips would be  
17 distributed among a group of people?

18 A Every bartender, gaucho, and server would be  
19 -- and the CSR -- would be entitled to a share of each  
20 of -- like, an equal share in envelopes.

21 Q And who would count the cash that was in the  
22 cash box at the end of the night?

23 A I did sometimes.

24 Q Did you ever see Mr. Gottardo count the cash  
25 in the cash box?

1 those various positions?

2 A Yes.

3 Q And so you understood that that money was  
4 being distributed from all of the cash tips at all of  
5 the different tables in the restaurant that were  
6 served during that particular shift; is that right?

7 A Yes.

8 Q And so I've not worked as a server in a  
9 restaurant. So would people generally during the  
10 period of time you worked there leave tips more by  
11 cash or by credit card?

12 A Credit card.

13 Q But some people did leave a cash tip; is  
14 that right?

15 A Yes.

16 Q And so your understanding was that all of  
17 the cash tips from all of those tables at the  
18 restaurant during that shift was placed in the cash  
19 box; is that right?

20 A Yes.

21 Q So you got a portion of that even though you  
22 didn't serve every table that night; right?

23 A Yes.

24 Q And were there evenings where you got cash  
25 out of the cash box where you didn't receive any cash

1 Q Anybody ever tell you that as a server the  
2 company would guarantee you were going to make at  
3 least 20 bucks an hour?

4 A That was said.

5 Q Right. Who told you that?

6 A Jarbas when I got hired.

7 Q And do you know whether in fact during some  
8 pay periods Casa do Brasil paid you extra money to  
9 ensure that you received \$20 an hour for that pay  
10 period?

11 A I don't recall.

12 Q So your testimony to be clear, it may have  
13 happened. It may not have happened. You just don't  
14 remember?

15 A I haven't seen my tip-pool sales reports, so  
16 I'm not sure.

17 Q Okay. I'm not talking about with the tip-  
18 pool reports. I'm saying, from the pay stubs you  
19 received, do you know whether there was any indication  
20 ever given to you that you were paid money by Casa do  
21 Brasil to ensure that you would make \$20 an hour for  
22 that period of time?

23 A I don't understand your question.

24 Q You understand what the \$20 an hour  
25 guarantee was; right? You said Mr. Gottardo told you

1 when you were brought in that you would make \$20 an  
2 hour as a server?

3 A Yes.

4 Q And do you know whether there were time  
5 periods during which the \$2.13 per hour plus the tips  
6 you earned did not equal \$20 per hour?

7 A I don't recall.

8 Q So you don't recall any time period during  
9 your employment there as a server when the company may  
10 have paid you an extra amount to ensure that the 2.13  
11 an hour plus the credit-card tips would equal \$20 per  
12 hour?

13 A I can't say that I know that.

14 Q The next thing you said as far as reasons  
15 for your lawsuit is, the POS doesn't allow you to  
16 claim tips?

17 A Yes.

18 Q Why do you believe that's illegal not for  
19 the POS to allow you to declare your tips?

20 A For tax purposes.

21 Q So it's your understanding that you are  
22 suing Casa do Brasil because for tax purposes they are  
23 supposed to allow you to record your tips?

24 MR. TRAN: Objection. The question  
25 calls for attorney-client communication. Calls for a

1 tips.

2 Q Tell me every example that you recall in  
3 which Mr. Gottardo received money from the cash tips.

4 A So there was one day that a server forgot to  
5 ring in their meal. Well, there's two different  
6 instances. One of them was that a server forgot to  
7 ring in a meal, and Cameron -- I saw Cameron taking  
8 money out of the cash-tips box, so I asked him -- I  
9 was like, "Why are you taking money out of the cash-  
10 tips box?" And he said, "Because Jarbas ordered me  
11 to."

12 Q Okay. You said there were two occasions.  
13 What's the second?

14 A The second one was a lady walking out on her  
15 tab. She couldn't afford it, and they also took that  
16 money out of the cash tips.

17 Q Who took the money out?

18 A I'm not sure who took it out, but someone  
19 had told me that that had been taken out. That time,  
20 I didn't see it happen.

21 Q Who told you that money had been taken out  
22 for the lady who walked her tab?

23 A One of the servers.

24 Q What's the name of the server?

25 A I'm not sure. It could have been one --

1 more than one; but if anyone would take -- the days  
2 where anyone would take money out of the tip box,  
3 everyone would talk about it because it would raise  
4 concerns.

5 Q Okay. Objection. Nonresponsive. I'm  
6 asking you specifically: Who was the server who told  
7 you on the occasion with the lady who walked out on  
8 her tab that money had been taken out of the cash box?

9 A I'm not sure.

10 Q And whoever this person was, did they tell  
11 you who took the money out?

12 A They said it was a CSR.

13 Q And did they tell you how much was taken?

14 A I believe it was around \$55.

15 Q Now let's talk about the first occasion.  
16 You said a server forgot to ring a meal. Was that a  
17 customer meal?

18 A Yes.

19 Q Okay. So not the server's meal?

20 A Right.

21 Q Right. So let's talk for a second about the  
22 server meal. While y'all worked, you were allowed to  
23 eat; is that correct?

24 A After the shift.

25 Q Right. And were you charged for that?



1 A No.

2 Q So again, when you say here a server forgot  
3 to charge, it was for a customer meal; and you said  
4 you saw personally Mr. Rogenby take the money out of  
5 the cash box; is that right?

6 A Yes.

7 Q And how much did you see Mr. Rogenby take  
8 out of the cash box?

9 A At least -- I -- I'm not sure but at least  
10 \$30.

11 Q Well, if you're not sure, how are you sure  
12 it's at least \$30?

13 A I saw a 20, but he took more than that. So  
14 I'm not sure exactly how much.

15 Q Okay. So the two occasions where you've  
16 seen money taken -- or know of -- was the one time  
17 with the server you saw Mr. Rogenby taken at least \$30  
18 out of the cash box; is that accurate?

19 A Yes.

20 Q And when did that take place, as best as you  
21 recall?

22 A I'm not sure.

23 Q And the second instance with the lady who  
24 walked her tab, you said that an unidentified server  
25 told you that a CSR took \$55; is that correct?

1 A Give or take.

2 Q Did the server tell you, "55, give or take"?

3 A Around \$55 because that was how much her  
4 meal cost.

5 Q And when did that occasion take place?

6 A I'm not -- I don't -- I'm not sure.

7 Q Now, when we started this discussion, we  
8 were talking about sharing of tips with supervisor and  
9 manager; and I asked you when Mr. Gottardo ever  
10 received either a cash tip or a credit card. Do you  
11 remember that?

12 A Yes.

13 Q Okay. And you gave me these two examples of  
14 money being taken out of the cash box allegedly;  
15 right?

16 A Yes.

17 Q But do you know of anything other than these  
18 two occasions where Mr. Gottardo received either a  
19 cash or a credit-card tip?

20 A I'm not sure.

21 Q Are there any occasions where you believe  
22 Mr. Cerruti received either a cash or a credit-card  
23 tip during the period of time you worked there?

24 A I'm not sure.

25 Q Okay. Now, when you said before you had to

1 was a server who had forgotten to put something into  
2 the POS; is that right?

3 A Yes. That one happened on multiple  
4 occasions.

5 Q Okay. Well, I asked you before for the  
6 examples; and you gave me those two. So what are the  
7 other examples?

8 A The other examples are the same thing.  
9 People would forget to ring in things, and then the  
10 managers would take it out of the cash box.

11 Q So tell me every one of those examples that  
12 you recall.

13 A I can't tell you details of every time. It  
14 happened often.

15 Q Tell me any others that you can recall.

16 A I've even forgotten to put something in. So  
17 I forgot to put in a meal; and they took it out of the  
18 cash tips; and I asked Jarbas, "Hey, I don't want  
19 everyone to be taken out. I don't want everyone's  
20 share to be taken out. Can I just pay for this?" And  
21 he said no.

22 Q So on one occasion, you recall where you  
23 forgot to put something into the POS?

24 A Yes.

25 Q And then Jarbas took that out of the cash

1 box; is that your testimony?

2 A Yes.

3 Q Okay. And when did that take place?

4 A This took place at the beginning of my  
5 employment with Casa.

6 Q And how much was removed from the cash box?

7 A One meal, so about \$50.

8 Q Okay. So I'm asking you what other examples  
9 you can give me where money was taken out of the cash  
10 box either as the result of something not being put  
11 into the POS system or somebody walking a tab. You've  
12 identified the one where you saw Cameron do it for,  
13 you said, \$30, the one time with the lady walking the  
14 tab where somebody told you that \$55 was taken, and  
15 this third instance where you forgot to put something  
16 in the POS and you -- did you see Jarbas take the  
17 money out of the cash box?

18 A He told me he was going to, and then they  
19 took it out. Yes.

20 Q Did you see Jarbas take it out?

21 A Yes. He told me he was going to.

22 Q He told you he was going to. Do you know  
23 whether it was in fact taken out?

24 A Yes. I do.

25 Q And how do you know that?

1           A     Because it was taken out of the total box;  
2     and, I mean, whenever we were counting it, he had  
3     already taken it out.

4           Q     Were you counting that evening?

5           A     That -- it was -- that day, it was during  
6     the day; and I wanted to leave and just go get cash  
7     out so that I could put the cash back in the box since  
8     they had taken it out.

9           Q     What I'm asking you is: How do you know the  
10    money was removed from the cash box on that particular  
11    occasion when you didn't see Jarbas take it out?

12          A     Because he advised me that he was taking it  
13    out.

14          Q     Right. That he was going to, is that your  
15    testimony?

16          A     He said he was going to. Yes.

17          Q     Right. My question is: Do you know that in  
18    fact he took it out of the cash box with respect to  
19    that particular instance?

20          A     Yes, because someone told me that.

21          Q     Okay. And who told you that?

22          A     One of the servers at the time.

23          Q     What's the server's name?

24          A     I can't remember.

25          Q     Okay. Any other examples that you can think

1 of where cash was taken out of the cash box before the  
2 tips were distributed?

3 A I can't remember specific instances other  
4 than those where I have the details.

5 Q I need you to understand this is my  
6 opportunity to ask you these questions; right? So  
7 you're saying, as we sit here today you can think of  
8 those three instances where money was taken from the  
9 cash box; and one of those was for a walked tab; and  
10 two of those were for some server, whether you or  
11 somebody else, not putting in a meal; is that right?

12 A Correct.

13 Q Can you think of any other instances where  
14 money was removed from the cash box by Casa do Brasil?

15 A It was any time someone forgot to put  
16 something in. I cannot remember details of the other  
17 times.

18 Q As you sit here today, can you identify any  
19 amount of money, other than those three examples you  
20 gave me, that was removed from the cash box by Casa do  
21 Brasil?

22 MR. TRAN: Objection. Asked and  
23 answered.

24 THE WITNESS: Can you repeat the  
25 question?

1 MR. BISSMEYER: Can you read it back,  
2 please?

3 THE REPORTER: Just one moment, please.  
4 (The reporter played the record as  
5 requested.)

6 THE WITNESS: I don't recall.

7 BY MR. BISSMEYER:

8 Q Okay. So you don't recall any amount of  
9 money ever taken from the cash box other than those  
10 three examples we've discussed; is that right?

11 A Not to my recollection.

12 Q And the last thing that I wrote down at  
13 least was time shaving. What are you referring to  
14 when you say time shaving?

15 A Time adjustments.

16 Q And is it your understanding that the --  
17 let's back up. When you started working at Casa do  
18 Brasil, did you understand that you were supposed to  
19 clock in and clock out using the POS system?

20 A Yes.

21 Q Were you told that that was required of you  
22 because they had to have an accurate count of the  
23 hours worked?

24 A Correct.

25 Q And so did you always clock in before you

1 was told they were paid 2.13 an hour.

2 A I don't recall.

3 Q So is it your position that none of the  
4 servers were ever told that they would be paid 2.13 an  
5 hour plus tips?

6 A I don't understand your question.

7 Q You understand what 2.13 per hour is; right?

8 A Yes.

9 Q Okay. And you understand what tips are?

10 A Yes.

11 Q Okay. So is it your position that none of  
12 the other servers -- we're just talking about the  
13 servers right now -- that none of the servers who  
14 worked there while you worked there were ever told,  
15 "While being a server, you will be paid 2.13 per hour  
16 plus tips"?

17 A I'm not sure.

18 Q Okay. Now let's talk about gauchos. Is it  
19 your position that none of the gauchos who worked  
20 there during the period of time you worked there were  
21 ever told that you will be paid some hourly wage plus  
22 tips?

23 A I'm not sure.

24 Q And let's talk about CSRs. That may be an  
25 easier way. Do you know how CSRs are paid in terms of



1 what they're paid?

2 A I'm not sure.

3 Q Do you know if CSRs are told that they will  
4 be paid some hourly amount plus tips?

5 A I'm not sure.

6 Q Now, you testified before that you were told  
7 by Mr. Gottardo that you as a server were going to be  
8 paid at least 20 bucks an hour; is that right?

9 A That's what was said.

10 Q And do you know whether other servers were  
11 told that they would also be paid a guarantee of at  
12 least \$20 an hour?

13 A I'm not sure.

14 Q Okay. Do you know whether any other gauchos  
15 had any sort of promise of a guaranteed amount per  
16 hour?

17 A I'm not sure.

18 Q Okay. Are you sure whether any of the CSRs  
19 had any promise of a guaranteed amount per hour?

20 A I'm not sure.

21 Q Okay. And you've never worked at Casa do  
22 Brasil in Houston; is that right?

23 A Correct.

24 Q Do you have any understanding as to whether  
25 the POS system in Houston requires that tipped

1 THE VIDEOGRAPHER: 4:03, off record.

2 (Off the record.)

3 THE VIDEOGRAPHER: This is the

4 beginning of File #6 to the deposition of Nathaly

5 Cortez. The time is 4:19. We're on the record.

6 BY MR. BISSMEYER:

7 Q Okay. Ms. Cortez, we're back from a break.

8 Before, we talked about the fact that Mr. Gottardo

9 told you when you started that as a server they would

10 guarantee you made \$20 an hour. Do you recall that?

11 A Yes.

12 Q Okay. Do you know of any legal requirement

13 that says they have to pay you at least \$20 an hour?

14 MR. TRAN: Objection. Calls for a  
15 legal conclusion.

16 A I'm not sure.

17 Q You're not sure. Okay. Do you know whether

18 Casa do Brasil ever paid you additional money as a

19 server to get you to the \$20 an hour number?

20 A I'm not sure.

21 Q You're not sure. If I told you they did, do

22 you have any reason to dispute that?

23 A Until I have my sales report and my full tip

24 records, until I have all of that, I'll be able to

25 answer that.

1 Q And what would they have anything to do with  
2 whether they paid you extra money to get you to \$20 an  
3 hour?

4 MR. TRAN: Objection. Vague.

5 A 'Cause I don't believe that.

6 Q Okay. So let's look at the first page of  
7 Exhibit 21, for example.

8 A Okay.

9 Q Okay. You see this was your pay stub for  
10 the pay period from 12/18/20 to 12/31/20; is that  
11 right?

12 A Correct.

13 Q And you see indicated on the top there  
14 miscellaneous earnings were paid to you in that pay  
15 period of \$59.50; is that right?

16 A Correct.

17 Q Now, you've testified before about some of  
18 the other depositions. Did you sit through Mr.  
19 Gottardo's deposition?

20 A Yes.

21 Q Do you remember Mr. Gottardo testifying  
22 about the fact that what's indicated as miscellaneous  
23 earnings is extra money paid in order to get you up to  
24 the \$20 per hour?

25 A That's what he said.

1 Q All right. Do you know of any other  
2 explanation for what the \$59.50 paid to you for this  
3 particular pay period would represent?

4 A Not sure.

5 Q Okay. Let's do this. Do you remember Mr.  
6 Gottardo talking to you about how they calculated  
7 getting you to the \$20 per hour?

8 MR. TRAN: Objection. Vague.

9 A No.

10 Q You don't recall. If you see on this, the  
11 pay rate, again, you were a server during this period  
12 of time; right?

13 MR. TRAN: Objection. Vague.

14 A Correct.

15 Q So you received 2.13 an hour plus tips. You  
16 see up there where it says "Rate, 2.13"?

17 A Yes.

18 Q And then it has hours next to it; right?

19 A Correct.

20 Q What is 2.13 times 58.82?

21 A I will answer your questions, but I'm not  
22 doing any more calculations, so if you'd like to do  
23 those.

24 Q Sure. We'll do them right here.

25 A All right.

1 Q Would you like me to put it on the camera?

2 A It's up to you.

3 Q I want to make sure you see 2.13 times 58.82  
4 equals -- what's that say?

5 A 125.28.

6 Q Okay. And it's actually 28.66. So if we  
7 rounded up in whole pennies to 29; right?

8 A Okay.

9 Q Okay. So we'll round up to 125.29, and what  
10 were your credit-card tips paid during that period of  
11 time?

12 A I'm not sure. I would have to see those  
13 sales-report records.

14 Q Look at what's reflected on the pay stub,  
15 please.

16 A I would still have to see those records.

17 Q What credit-card tips were reported for that  
18 pay period?

19 MR. TRAN: Objection.

20 A The one on here?

21 Q Yes.

22 A I can't say that they're accurate.

23 Q I asked you what's reflected.

24 A Can you please not raise your voice at me  
25 anymore?

1           Q     We have a recording. It'll show whether a  
2 voice is raised. What are the credit-card tips  
3 reported on this pay stub?

4                   MR. TRAN: Counsel, soften your tone.  
5 Lower your voice.

6                   MR. BISSMEYER: I appreciate the  
7 coaching. We'll continue. There's a recording.  
8 Thank you.

9                   THE WITNESS: I would appreciate if you  
10 lowered your tone with me.

11 BY MR. BISSMEYER:

12           Q     What are the credit-card tips reflected on  
13 this pay stub?

14           A     Can you please lower your tone?

15           Q     My voice is lowered. What are the credit-  
16 card tips reflected on this pay stub?

17           A     This says 991 with 61 cents.

18           Q     Thank you. So the prior number was 125.29.

19           A     Okay.

20           Q     Plus credit-card tips reflected, 991.61;  
21 right? And what's the number indicated as  
22 miscellaneous earnings on this pay stub?

23           A     59.50.

24           Q     And what's the total of those three numbers?

25           A     On that -- on your phone?

1 Q Yep, on the calculator.

2 A 1176.

3 Q And how many cents?

4 A Forty.

5 Q Okay. And if we divide that by what was the  
6 total number of hours reported for that pay period?

7 A 58.8.

8 Q 58.82; right? What's the number?

9 A Twenty.

10 Q Okay. So do you have any reason to believe  
11 that for this particular pay period Casa do Brasil  
12 didn't pay you \$59.50 in order to meet the guarantee  
13 that Mr. Gottardo had promised you?

14 A I'm not sure.

15 MR. BISSMEYER: You're not sure. Okay.  
16 I will pass the witness.

17 MR. TRAN: We reserve all questions  
18 until time of trial.

19 THE REPORTER: All right then. All  
20 finished.

21 THE VIDEOGRAPHER: 4:26, we're off  
22 record.

23 (Signature reserved.)

24 (Whereupon, at 4:26 p.m., the  
25 proceeding was concluded.)